



April 16, 2002

Mr. Christopher B. Gilbert  
Bracewell & Patterson, L.L.P.  
711 Louisiana Street, Suite 2900  
Houston, Texas 77002-2781

OR2002-1913

Dear Mr. Gilbert:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161399.

The Houston Independent School District (the "district"), which you represent, received two requests for several categories of information related to the termination of a former administrator. You advise that there is no information responsive to one of the categories of both requests.<sup>1</sup> You claim that the remaining requested information is excepted from disclosure under section 552.103 of the Government Code. One of the requestors and an attorney for both requestors have submitted arguments regarding why the information should be released. See Gov't Code § 552.304 (permitting member of the public to submit to attorney general reasons why requested information should or should not be released). We have considered the exception you claim, the arguments from, and on behalf of, the requestors, and the submitted information.

As an initial matter, we note that you have failed to submit information responsive to the request for information.<sup>2</sup> Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request a

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<sup>1</sup> The Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

<sup>2</sup> You have submitted a copy of the plaintiff's original petition to show that there is a pending case, and a discovery order pertaining to the case.

copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Under section 552.302 of the Government Code, a governmental body's failure to timely submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Because you have not submitted the information, we have no basis for finding that you may withhold it under section 552.103. Thus, we have no choice but to order the requested information released per section 552.302.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

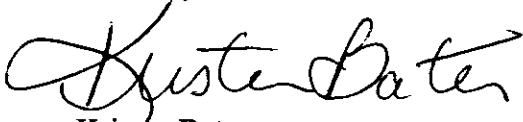
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kristen Bates".

Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/seg

Ref: ID# 161399

c: Mr. Frank Watson  
10910 Whitethorn Street  
Houston, Texas 77016